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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.S., a Person Coming Under the
Juvenile Court Law.

B206209
(Los Angeles County
Super. Ct. No. KJ30219)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Daniel S. Lopez, Judge. Affirmed.

Kosnett & Durchfort and David E. Durchfort for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Erika D. Jackson, Deputy Attorney General, for Plaintiff and Respondent.

J.S. appeals from the order of wardship entered following findings that he committed assault with intent to commit oral copulation, oral copulation by force or duress, dissuading a witness by force or threat, and false imprisonment by violence. He was placed home on probation. The minor contends: “1. A threat to personal property does not constitute duress,” “2. A threat to property is not equivalent to a threat to bodily safety,” “3. None of the facts supports a finding of duress,” and “4. Appellant’s conduct is not felonious.” We affirm.

BACKGROUND

The minor and A.G. (both males) were ninth grade students at a high school in Pomona. A.G. was enrolled in special education classes, had been diagnosed with an “emotional disorder,” and was taking medication. The two boys occasionally played together and both were members of “gamers club.”

At one point during a gamers club meeting on the afternoon of April 17, 2007, A.G. went to the bathroom and urinated in the toilet of a stall that did not have a door. When he turned to leave, the minor was standing at the opening of the stall. At first, A.G. tried to let the minor go past him, thinking that the minor might be wanting to use the toilet. But the minor did not move, and as A.G. tried to get out of the stall, the minor blocked A.G. by “either grabbing [him] or pushing [him] away from where the door would be if there was a door.” The minor then said to A.G., “Love me.” The minor repeated this a couple of times while he grabbed A.G.’s shirt or arm to keep A.G. from getting past him.

A.G. kept trying to push the minor back, but was unable to do so. The minor then took A.G.’s eyeglasses from his face and held A.G.’s glasses over the toilet. The minor told A.G. that “the only way” he could get his glasses back would be to “suck [the minor’s] cock.” A.G. initially thought that the minor was kidding and tried to convince the minor to return the glasses. The minor responded that if A.G. continued, he would drop the glasses in the toilet and flush it. A.G., whose vision would be a “big fuzz” without his glasses and had already lost two pairs of glasses that year, decided to comply with the minor’s demand. The minor then pulled down his pants and A.G. “sucked [the

minor's] cock." The minor ejaculated in A.G.'s mouth. The minor pulled up his pants, gave A.G.'s glasses back to him, and said to A.G., "You better not tell anyone or else." A.G. rinsed out his mouth; the minor walked out of the bathroom.

A.G. next headed back to the room where the gamers club was meeting. Before reaching the room, he saw D.A., who asked A.G. if there was something wrong. A.G. said that something went into his mouth that was not supposed to be there. D.A. started guessing what it was, and after some wrong guesses A.G. acknowledged that it was "skeet skeet," which is "the same [fluid] as an ejaculation." A.G. also acknowledged that the minor, who D.A. had just seen pass by, was involved. D.A. said, "I'm going to go beat [the minor] up for you, because that's wrong." A.G. went home that day without telling anyone else what had happened.

When A.G. returned to school the next week, he saw the minor in an area where A.G. often spent time. A.G. was nervous because he thought that D.A. might have beaten up the minor and that the minor might want to retaliate against him. The minor approached A.G. and asked why A.G. had told what had happened. The minor pushed A.G. and tried to "stomp" on A.G.'s foot, which A.G. had injured badly over the weekend. The minor told A.G. that nobody would believe him because everyone was on the minor's side. A.G. walked to the school nurse's office and the minor followed. Once inside the nurse's office, A.G. got permission to use the bathroom. From there, A.G. sent a text message to his mother saying, "Get me out of school. Someone is trying to beat me up."

After sending the text message, A.G. went to his classes. In A.G.'s third period class, classmates asked him whether what was being said was true. A.G. felt bad because his classmates would think he was gay. In an effort to make his classmates stop, A.G. said, "I know where my dad's guns are, and they're loaded already." A.G.'s mother picked him up early from school that day and he told her what had happened.

In defense, the minor testified that A.G. sometimes acted in strange ways and the minor felt sorry for A.G. because nobody liked him. The minor denied having had any interaction with A.G. on the day of the incident. A student in A.G.'s third period class

testified that a note had been passed around which said that the minor had threatened to drop A.G.'s glasses in the toilet if A.G. did not orally copulate the minor. A.G. got mad about the note and threatened to kill everyone with his father's rifles. In the past, A.G. had pretended to masturbate in class and had bragged about his sexual exploits. A pediatrician testified that the minor's physical development was at least one year delayed and it was his opinion that the minor "could not achieve conscious ejaculation."

DISCUSSION

The minor asserts that his threat of damage A.G.'s eyeglasses was insufficient to establish this forcible oral copulation. The contention is without merit.

Forcible oral copulation is committed "when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim" (Pen. Code, § 288a, subd. (c)(2).) As applied to this offense, "duress" is defined as "'a direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted.' [Citation.]" (*People v. Leal* (2004) 33 Cal.4th 999, 1004, italics omitted.) "[D]uress involves psychological coercion. [Citation.] Duress can arise from various circumstances, including the relationship between the defendant and the victim and their relative ages and sizes. [Citations.]" (*People v. Schulz* (1992) 2 Cal.App.4th 999, 1005.)

Here, A.G. was a special education student, whom the minor had seen acting strangely in the past and who evoked the minor's sympathy because nobody liked A.G. When A.G. tried to leave the toilet stall, the minor blocked his way by "grabbing" or "pushing" A.G. The minor then took A.G.'s glasses from his face, leaving A.G.'s vision as a "big fuzz," and threatened to destroy the glasses if A.G. did not comply with the minor's demand to perform an act of oral copulation. The evidence adduced below was such that a rational trier of fact could conclude beyond a reasonable doubt that the minor had committed forcible oral copulation in violation of Penal Code section 288a, subdivision (c)(2). (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

The minor further contends that the evidence was insufficient to establish that his conduct was felonious. But the minor fails to offer persuasive legal authority nor any principled reason why the findings as to his offense should have been so limited.

Finally, the minor urges that the finding of assault with intent to commit oral copulation should be set aside because Penal Code section 220 “criminalizes assault if the accused intended to orally copulate the victim—not the other way around.” In making this argument, the minor misplaces reliance on *People v. Elam* (2001) 91 Cal.App.4th 298, 309–310, which explains that the crime of sexual battery requires that the perpetrator touch an intimate part of the victim. Nothing in the crime of forcible oral copulation under Penal Code section 288a limits the offense to an assault in which the defendant intends to orally copulate the victim.

DISPOSITION

The order under review is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

DUNNING, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.